IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 154 OF 2007

Shikshan Vikas Mandal & Ors. .. Appellants.

vs.

Ajit Pandurang Gogate. .. Respondent.

Dr. V.V. Tulzapurkar, Sr. Adv. a/w P.P. Chawan
i/by Vishal Ghosalkar for Appellants.
Mr. P.M. Patne, AGP., for R. Nos. 2 & 3.
Mr. R.S. Desai for Respondent no. 4.

CORAM: J.N. PATEL &,
A.A. SAYED, JJ.
DATE: 23RD JULY, 2007.

P.C.

1. Heard the learned counsel for the parties. The Letters Patent Appeal can be disposed of at the stage of admission.

2. The appellant is aggrieved by decision of the learned Single Judge which approved the action of the Assistant Charity Commissioner in directing the election of the managing committee of the trust being held with a rider that the election should be held by

its nominee i.e. the Inspector from his office who has been nominated as an election officer along with a person to assist him.

3. Mr. Tulzapurkar, the learned Senior Advocate appearing for the appellant, submitted that the learned Single Judge has failed to see that the Assistant Charity Commissioner has exceeded his jurisdiction in nominating an inspector from his office as an election officer with a person to assist him in order to conduct the election of the Trust in question. In support of his contention, he has placed reliance on three decisions of the learned Single Judge of this Court i.e. (i) Lahudas Sambhaji Karad vs. State of Maharashtra & Ors., 1993 Mh.L.J. 1056, (ii) Asaram Bhimrao Shinde & others vs. State of Maharashtra & others, 2002 (3) Bom. C.R. 16 and (iii) Raghunath Vyankatrao Phadnis & others vs. Sayyad Mahamood Sayyad Nizamoddin & others, 2003 (1) Bom. C.R. 807. It is, therefore, submitted that the learned Single Judge ought to have interfered in the matter as jurisdictional error is apparent on the face of the record. We find none of the authorities cited above lays down any such fetters on the powers of the Assistant Charity Commissioner.

4. The learned counsel for the other side submits that taking into consideration that the election of the trust was not held since the year 1993 and the nature

of the dispute before the Assistant Charity Commissioner, it cannot be said that the order of the Assistant Charity Commissioner which is passed under Section 41A of the Bombay Public Trusts Act directing the trust to hold the election by nominating a public servant i.e. Inspector in the office of the Charity Commissioner and a person to assist him was well within the jurisdiction of the said Assistant Charity Commissioner and the learned Single Judge has rightly dismissed the writ petition.

5. There is no quarrel over the issue that the present managing committee of the Trust has out-lived its term since the year 1993 and no election has been held thereafter. As per Bye Laws which govern the election to the Governing Council/Managing Committee and its office bearers, the Governing Council/ Managing Committee is elected for a term of three years.

6. From the nature of dispute which has been raised before the Assistant Charity Commissioner which not only relates to mal-administration of the trust but also includes financial irregularities and other such activities detrimental to the interest of the Trust, it was appropriate on the part of the Assistant Charity Commissioner to have issued directions to the Trust to hold elections by nominating public servant i.e. inspector employed in the office of the Charity Commissioner and a person to assist him in holding the

election. In our view, if the Assistant Charity Commissioner has the power to direct the Trust to hold the election, it also has the power to regulate the holding of the election by nominating a public servant so that the election can be held under the supervision and control of an independent person.

7. Therefore, we do not find that the learned Single Judge has committed any error or irregularity in dismissing the writ petition. The Letters Patent Appeal, therefore, stands dismissed with costs.

8. In view of the dismissal of the Letters Patent Appeal, the Civil Application does not survive. The same is dismissed as infructuous.

(J.N. Patel, J.)

(A.A. Sayed, J.)